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C O N F I D E N T I A L SECTION 01 OF 02 WARSAW 003545

SIPDIS

STATE FOR PM/RSAT, L/PM AND L/T  
STATE ALSO FOR EUR/NCE AND EUR DAS PEKALA

E.O. 12958: DECL: 10/05/2015

TAGS: [KTIA](#) [MARR](#) [PREL](#) [MASS](#) [PL](#) [NATO](#)

SUBJECT: TIME TO THINK SOFA FOR POLAND

REF: A. WARSAW 708

[B.](#) STATE 21653

Classified By: Ambassador Victor Ashe for reasons 1.4 (b) and (d).

[11.](#) (U) This is an action message. Please see para 10.

[12.](#) (C) SUMMARY: Embassy Warsaw recommends that the USG begin negotiations for a bilateral Status of Forces Agreement (SOFA) with Poland as soon as possible. In the context of both NATO obligations and bilateral programs, U.S. military personnel are for the first time being assigned to billets in Poland under U.S. combatant command and/or NATO command authority, outside of COM authority. However, we do not have in place a bilateral SOFA with Poland or equivalent legal instrument to provide privileges and immunities for these personnel and their dependents. With 16 NATO billets, 18 F-16 program related billets and various co-production and bilateral military cooperation positions in the offing, spread across a half dozen disparate bases and facilities, the current approach of ad hoc MOAs and MOUs backed by the NATO SOFA is not sufficient. The situation would become even more urgent should there be a decision to establish a "Third Site" for Missile Defense and should Poland be chosen as the host nation. END SUMMARY.

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Small, Scattered Deployments Make Support Critical  
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[13.](#) (C) The lack of a SOFA already impacts U.S. programs. Bydgoszcz, Szczecin, Krzesiny, Poznan, Powidz and Gdynia will all host U.S. troops or DOD civilians in the near future. While EU member state military personnel assigned to the NATO Joint Forces Training Center (JFTC) in Bydgoszcz enjoy full privileges under EU regulations, U.S. TDY personnel currently posted there must live on the economy as "temporary visitors" with no residency rights and required to leave the country every 90 days. At the same time, 2 key U.S.-designated staff positions at the NATO Multi-National Corps Northeast (MNC-NE) in Szczecin remain vacant, because U.S. commanders will not risk assigning personnel to a permanent change of station (PCS) without the proper legal protections in place.

[14.](#) (C) Other programs scheduled to come on-line soon would be similarly affected. The delivery to Poland of 48 F-16 fighter aircraft beginning in November 2006 will require the long-term posting of 18 USG personnel and contractors to Poznan to support Polish air bases in Krzesiny and Lask (pronounced "wask"). The C-130s Poland purchased from the U.S. will require an instructor pilot and 1-3 contractors to be stationed in Powidz as early as 2008. There are also other individual cases of USG personnel being posted to Poland in connection with bilateral programs. Finally, should there be a decision to proceed with a "Third Site" for Missile Defense, and should Poland be chosen as the basing nation, we would absolutely require a SOFA to cover the USG personnel required to build, equip and man the Third Site. The current approach, negotiating site-specific Memoranda of Agreement (MOAs) or Understanding (MOUs) for each individual base or facility has revealed that taxes, vehicle and residence registration and liability under local criminal law all can pose significant challenges for U.S. military personnel and contractors and their families who do not have diplomatic status.

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Bydgoszcz: MOA Bogged Down in Swamp of Approvals  
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[15.](#) (C) The situation in Bydgoszcz illustrates the problem of handling this issue on a case-by-case basis. The NATO Joint Forces Training Center (JFTC) in Bydgoszcz (reflets) plans to add 12 U.S. military members and their families as soon as possible. However, the Memorandum of Agreement (MOA) between NATO and Poland that will govern the status of U.S. forces there is in limbo until Poland receives an "implementation agreement" indicating that the USG consents to the NATO-Poland MOA. If there were a SOFA, troops might already be in place. In fact, the NATO-Poland MOA for Bydgoszcz, and its attendant "technical arrangements agreement" could serve as a rough draft from which to begin crafting a comprehensive bilateral SOFA between the U.S. and Poland.

Szczecin: Tax Relief Requires 3 European Parliaments

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16. (C) The situation in Szczecin is even more complicated. Under the existing Memorandum of Understanding (MOU), US troops to be stationed at the Headquarters MNC-NE in Szczecin, Poland would not enjoy exemption from the Value Added Tax (VAT). An agreement between Poland's Ministry of Finance (MOF) and MNC-NE provides VAT exemption to personnel covered under paragraph 2B of the MNC-NE Corps Convention - the document that defines roles and responsibilities in the MNC-NE. Unfortunately, paragraph 2B of the Corps Convention states that such benefits accrue only to the framework nations of MNC-NE, Denmark, Germany and Poland. Hence, any "participating nations" which join MNC-NE later, such as the U.S., would not enjoy these benefits, including VAT exemption. An amendment to the MOU granting participating nations the same benefits as framework nations is now pending but will require ratification by the three framework nation parliaments, according to Thomas Schneivoigt the legal advisor to MNC-NE. In Schneivoigt's view fears that timely action by all three bodies is unlikely.

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F-16s: US Personnel Support Needed

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17. (C) Deployment of U.S. troops will be critical to the success of our most significant bilateral security program, Poland's purchase of 48 F-16s from the U.S. Four of these will arrive in Krzesiny in November 2006. Before that, U.S. plans call for the PCS deployment of 2 military, 1 DOD civilian and 15 American contractors to Poznan, near Krzesiny, to support the aircraft. Eventually, Krzesiny should host 32 F-16s, while another 16 will be deployed in Lask. Without a SOFA, these deployments, and the entire program, would be jeopardized.

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Across Poland, Registration and Legal Status Questions

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18. (C) The existing NATO SOFA exempts "forces" (uniformed troops) stationed in Poland from having to complete local registration requirements. Likewise, EU citizenship might afford similar relief to dependents of EU troops. Because they are neither "forces" nor EU citizens, AmCit dependents of US troops and DOD civilians would probably have to complete local registration requirements for their vehicles and residences. A bilateral SOFA would cover DOD civilians and dependents.

19. (C) Article 7 of the NATO SOFA gives the sending nation legal jurisdiction over troops that commit crimes in the line of duty. This privilege does not extend to civilian employees of foreign militaries. Hence, DOD civilians accused of crimes in Poland would be subject to local legal jurisdiction regardless of their duty status at the time of the incident. A bilateral SOFA would provide the needed protection.

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A Bilateral SOFA Would Address These Problems

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110. (C) To unify and streamline the process of positioning U.S. military personnel in country, Post recommends Department begin negotiations immediately for a bilateral SOFA with Poland. Given the imminent arrival of 34 USG personnel and their families in 6 separate locations to support, among other things, the 3.8 billion dollar purchase of F-16 fighters, there is a pressing need to address issues of tax relief, civilian registrations and legal status. The incoming Polish government will be at least as pro-American as its predecessor and would likely readily accept a U.S. military footprint in Poland, which suggests the GOP would actively cooperate in negotiating a SOFA.

Ashe